

1
2
3
4
5
6
7
8
9 SENIOR DISTRICT JUDGE ROBERT J. BRYAN
10 MAGISTRATE JUDGE DAVID W. CHRISTEL

11
12
13
14
15
16
17 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

18 BERNARDINO GINO SANDOVAL,

19 Plaintiff,

20 v.

21 MIKE R OBENLAND, et al.,

22 Defendants.

23 NO. 3:17-cv-05667-RJB-DWC

24 DEFENDANTS' RESPONSE TO
MOTION FOR DECLARATORY
JUDGMENT

25 The Defendants respectfully file their response to Sandoval's Motion for declaratory
26 Judgment. [ECF No. 40](#).

27
28 I. INTRODUCTION

29 Sandoval alleges the Defendants have violated his constitutional right to marry former
30 fellow inmate Alan French because the Department's previous marriage policy required that the
31 prospective spouse be on the inmate's approved visitor list. Since Sandoval's release from
32 Department custody on July 14, 2017, neither he nor French have made any attempt to submit a
33 marriage application under the revised policy. A policy which does not prevent their ability to
34 marry. Sandoval is now in the King County jail because he has since been arrested and charged

1 with Assault in the First Degree-Domestic Violence against a roommate with whom he was
 2 engaged in a “romantic” relationship. [ECF No. 30-1](#).

3 Sandoval now files this motion for a declaratory judgment asking the Court find the
 4 Department’s previous marriage policy unconstitutional. [ECF No. 36 at 1](#). Because Sandoval
 5 cannot meet the heavy burden required of a Preliminary Injunction, the Court should deny his
 6 frivolous motion.

7 **II. RESPONSE**

8 In support of his motion, Sandoval cites to a Third Circuit holding a declaratory judgment
 9 was proper where the Defendant had been required to change its actions as a result of a Court
 10 order. *Main Road v. Aytch*, 565 F.2d 54, 59 (3rd Cir. 1977). That is not the case here. There is
 11 no evidence the Department removed its visitation requirement as part of a Court order and its
 12 previous policy was found to be constitutionally adequate by this Court.

13 On the contrary, Sandoval’s declaratory relief request is moot because he is no longer in
 14 the Department of Corrections’ custody. In fact, Sandoval waited to file this lawsuit after his
 15 release. Sandoval’s claims seeking declaratory or injunctive relief are moot because he is no
 16 longer subject to the prison policy he challenges, a policy which is no longer in place. Any
 17 declaratory or injunctive relief ordered in Sandoval’s favor “would have no practical impact” on
 18 his rights and “would not redress in any way the injury he originally asserted.” *Incumma v.*
 19 *Ozmint*, 507 F.3d 281, 287 (4th Cir. 2007) *cert. denied*, 553 U.S. 1007 (2008). The fact that
 20 Sandoval may return to Department custody is “too speculative a basis” to determine that
 21 Sandoval’s claims are capable of repetition. *Alvarez v. Hill*, 667 F.3d 1061, 1065 (9th Cir. 2012).
 22 See *United States v. Howard*, 480 F.3d 1005, 1009 (9th Cir. 2007) (“acknowledg[ing] that we
 23 cannot assume that criminal conduct will be recurring on the part of these defendants”); *Reimers*
 24 *v. Oregon*, 863 F.2d 630, 632 & n. 4 (9th Cir. 1988) (holding that plaintiff, who had been released
 25 from prison, had no reasonable expectation of returning to custody because such a return would
 26 occur only if he committed an additional criminal act, but he was “able, and indeed is required

1 by law, to prevent this from occurring"); cf. *O'Shea v. Littleton*, 414 U.S. 488, 495–97 (1974)
 2 (holding that plaintiffs failed to allege an actual or threatened injury by asserting that they might
 3 be subject to the challenged criminal justice system in the future; anticipating whether and when
 4 a party will be charged with a crime is too speculative and conjectural, and the court assumes, in
 5 any event, that plaintiffs "will conduct their activities within the law and so avoid prosecution
 6 and conviction").

7 **III. CONCLUSION**

8 Sandoval's motion for declaratory relief should be denied and the Court should find his
 9 request for such relief moot since he is no longer in the Department of Corrections' custody.

10 RESPECTFULLY SUBMITTED this 31st day of May, 2018.

11 ROBERT W. FERGUSON
 12 Attorney General

13
 14 s/ Candie M. Dibble
 15 CANDIE M. DIBBLE, WSBA #42279
 16 Assistant Attorney General
 Corrections Division
 17 1116 West Riverside Avenue, Suite 100
 Spokane, WA 99201-1106
 (509) 456-3123
 18 CandieD@atg.wa.gov

CERTIFICATE OF SERVICE

I hereby certify that I caused the foregoing Defendants' Response to Motion for Declaratory Judgment to be electronically filed with the Clerk of the Court using the CM/ECF system, and I certify that I mailed by United States Postal Service the document to the following non CM/ECF participants:

BERNADINO G. SANDOVAL BA #218007343
MALENG REGIONAL JUSTICE CENTER
DEPT. OF ADULT DETENTION
620 WEST JAMES STREET
KENT, WA 98032

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 31st day of May, 2018, at Spokane, Washington.

s/ Patty Willoughby
PATTY WILLOUGHBY
Legal Assistant III
Corrections Division
1116 West Riverside Avenue, Suite 100
Spokane, WA 99201-1106
(509) 456-3123
PattyW@atg.wa.gov